Tuesday, August 10, 2010

House Meets At…	**Votes Predicted At…**
9:00 a.m. For Morning Hour 10:00 a.m. For Legislative Business Five "One-Minutes" per side	First vote: 10:30 – 11:30 a.m. Last vote: 2:00 – 3:00 p.m.

ANY ANTICIPATED MEMBER ABSENCES FOR VOTES TODAY SHOULD BE REPORTED IMMEDIATELY TO THE OFFICE OF THE MAJORITY WHIP AT 226-3210.

Floor Schedule and Procedure

- **H. Res. 1606 – Rule providing for consideration of the Motion to Concur in the Senate Amendment to H.R. 1586 (*Rep. Slaughter – Rules*):** The rule provides for the consideration of the Senate amendment to the House amendment to the Senate amendment to H.R. 1586. The rule further provides one hour of debate equally divided and controlled by the chairs and ranking minority members of the Committee on Appropriations, the Committee on Ways and Means, and the Committee on Energy and Commerce. The rule makes in order a motion by the chair of the Committee on Appropriations that the House concur in the Senate amendment. The rule waives all points of order against consideration of the motion. The rule provides that the Senate amendment and the motion shall be considered as read. The rule waives clause 6(a) of rule XIII (requiring a two-thirds vote to consider a rule on the same day it is reported from the Rules Committee) against any resolution reported from the Rules Committee through the legislative day of Wednesday, August 11, 2010. Debate on the rule will be managed by Rep. Slaughter, and consideration will proceed as follows:

    - One hour of debate on the rule.
    - Possible vote on a Democratic Motion ordering the previous question. **Members are urged to VOTE YES.**
    - Vote on adoption of the rule. **Members are urged to VOTE YES.**

- **Motion to Concur in the Senate Amendment to H.R. 1586 - Education Jobs and Medicaid Assistance Act (*Reps. Obey/Waxman/Levin – Appropriations/Energy and Commerce/Ways and Means*)** Pursuant to H.Res. 1606 debate on the bill will be managed by Appropriations Committee Chairman David Obey, Energy and Commerce Chairman Henry Waxman, and Ways and Means Chairman Sander Levin, or their designees. Consideration of the bill will begin as follows:

    - One hour of general debate on the motion to concur.
    - Vote on the motion to concur. **Members are urged to VOTE YES.**

- **Suspension Bills**: Today, the House will consider one bill on the Suspension calendar. Bills considered on the Suspension calendar are debatable for 40 minutes; may not be amended; and require a two-thirds vote for passage. If a recorded vote is requested, it will be postponed.

    1. **H.R. 6080 -** Emergency Border Security Supplemental Appropriations Act, 2010 (Reps. David Price/Giffords – Appropriations)

Bill Summary & Key Issues

Summary of Senate Amendment to H.R. 1586 – Education Jobs and Medicaid Assistance Act

CBO estimates that over ten years enactment of this bill will reduce the deficit by $1.37 billion.

The Education Jobs and Medicaid Assistance Act provides a total of $26.1 billion in funding for education jobs ($10 billion) and FMAP ($16.1 billion), more than fully offset by the following: rescissions ($6.7 billion), Medicaid AMP changes ($2.1 billion), Supplemental Nutrition Assistance changes ($11.9 billion), elimination of advanced refundability of Earned Income Tax Credit ($1 billion), and closure of foreign tax credit loopholes ($9.75 billion).

FMAP. Under current law, the federal Medicaid matching rate is increased by 6.2 percentage points for all States, and by additional percentage points for states with high unemployment. These temporary increases were enacted in the Recovery

Act in February 2009 in response to the increased Medicaid caseloads and decreasing state revenues resulting from the recession. The increase is scheduled to expire on December 31, 2010. The bill continues the additional federal assistance for six months, but would phase the level of assistance down. For January – March, 2011, the federal Medicaid matching rate would be increased by 3.2 percentage points for all States, and for April – June, 2011, the federal Medicaid matching rate would be increased by 1.2 percentage points for all States. For the same six-month period, states with high unemployment would continue to receive the additional percentage points, as they do under current law. This will ensure that states continue to receive increases throughout state fiscal year 2011.

Education Jobs Funding. The bill provides $10 billion for additional support to local school districts to prevent imminent layoffs. It is estimated that this fund will help keep nearly 140,000 educators employed next year. The bill language is virtually identical to the language that passed the House.

The fund will be administered by the Department of Education. After reviewing State applications, the Department will make formula allocations to States based on total population and school age population. States will then distribute the funds to school districts through their respective funding formulas or based on each district's share of Title I funds. In the case that a Governor does not submit an approvable application for funds to the Department of Education, the bill directs the Secretary to bypass the State government and make awards directly to other entities within the State.
The bill includes provisions to ensure that States use these funds for preservation of jobs serving elementary and secondary education. Amounts from the Education Jobs Fund may not be used for purposes such as equipment, utilities, renovation, or transportation. The bill prohibits States from using any of these funds to add to "Rainy-Day Funds" or to pay off State debt.

In order to receive an Education Jobs Fund grant, each State must provide assurance that State spending for both K-12 and higher education (measured separately) in fiscal year 2011 will be at or above either: (1) the fiscal year 2009 level (in aggregate or per pupil); (2) the same percentage share of the total State budget as in fiscal year 2010, or; (3) for states demonstrating especially dire fiscal conditions, the 2006 fiscal year aggregate dollar level or percentage share.

OFFSETS

Addition of Treatment of Certain Drugs for Computation of Medicaid AMP – Under current law, the calculation of the Medicaid average manufacturer price (AMP) excludes certain payments and rebates if received from or provided to

entities other than retail community pharmacies. The bill provides an exception to that exclusion for inhalation, infusion, instilled, implanted or injectable drugs that are not generally dispensed through retail community pharmacies. This will ensure accurate calculation of AMP for these types of drugs. The provision is estimated to save $2 billion over ten years.

Food Stamps. Effective March 31, 2014, food stamp benefits will return to the levels that individuals would have received under pre-Recovery Act law. This modification is estimated to save $11.9 billion over ten years.

Other Spending Reductions. The amendment includes over $6.7 billion in rescissions from programs that no longer require funding, have sufficient funding, or have funding that probably cannot be spent before the authority to do so expires. Rescissions include nearly $2.25 billion from Recovery Act programs, over $2.3 billion in Department of Defense funds unrelated to current military efforts, and about $2.15 billion from other agencies. The Department of Education's Race to the Top, charter school fund, and the Teacher Incentive Fund are not included among these programs. Rescissions include:

- $122 million in funding provided to the Department of Agriculture for past emergencies.
- $302 million in Recovery Act funding provided to the Department of Commerce for broadband grants.
- $260.5 million in Recovery Act funding provided to the Department of Defense.
- $1.8 billion in funds appropriated to the Department of Defense for programs that have been terminated or for systems no longer needed.
- $2.2 billion in highway contract authority.
- $18 million in funding appropriated to the Nuclear Regulatory Commission.
- $20 million from the Department of Energy for nuclear energy
- $1.5 billion from Recovery Act funding for the Department of Energy
- $100 million in funding appropriated to the General Services Administration.
- $28.6 million in Recovery Act funding appropriated to the Department of Interior and the EPA.
- $14.2 million in funding provided in as early as 2004 to the National Park Service and the Fish & Wildlife Service.
- $500 million in funds appropriated to the Department of Defense for military construction projects that achieved bid savings.

- $6 million in funds appropriated in 1995 to the Department of Health and Human Services.
- $47 million in Recovery Act funding to the Commissioner of Social Security.
- $82 million from the Department of Education Student Aid Administration.
- $50 million in funding from the Department of Education for literacy.
- $10.7 million in other Department of Education rescissions
- $6.1 million in Recovery Act funding provided to the Department of Veterans Affairs for which the purpose has been completed.
- $50 million in funding appropriated for the Millennium Challenge Corporation.
- $70 million in funding appropriated to the Department of State and USAID for the Civilian Stabilization Initiative.
- $7.9 million in funds appropriated in 2004 and 2006 to the Federal Aviation Administration.
- $115 million in other Recovery Act rescissions.

FOREIGN TAX CREDIT LOOPHOLES

Summary. The bill includes changes developed jointly by the Treasury Department, the Committee on Ways and Means and the Senate Finance Committee to curtail abuses of the U.S. foreign tax credit system and other targeted abuses. Foreign tax credits are intended to ensure that U.S.-based multinational companies are not subject to double taxation. However, taxpayers have taken advantage of the U.S. foreign tax credit system to reduce the U.S. tax due on completely unrelated foreign income in a manner that has nothing to do with eliminating double taxation. The bill would eliminate $9.6 billion of foreign tax credit loopholes.

Rules to prevent splitting foreign tax credits from income. To prevent double taxation (i.e., full taxation by both a foreign country and by the United States on the same item of income), taxpayers are permitted to claim foreign tax credits with respect to foreign taxes paid on income earned offshore. Taxpayers have devised several techniques for splitting foreign taxes from the foreign income on which those taxes were paid. With these techniques, the foreign income remains offshore and untaxed by the United States, while the foreign taxes are currently available in the U.S. to offset U.S. tax that is due on other foreign source income. In many cases, the foreign income is permanently reinvested offshore such that it likely will never be repatriated and taxed in the U.S. This use of foreign tax credits has nothing to do with relieving double taxation. The President's FY 2011 Budget proposes to adopt a matching rule to prevent the separation of creditable foreign

taxes from the associated foreign income. The bill would adopt the President's Budget proposal by implementing a matching rule that would suspend the recognition of foreign tax credits until the related foreign income is taken into account for U.S. tax purposes. The bill targets abusive techniques and does not affect timing differences that result from normal tax accounting differences between foreign and U.S. tax rules. The provision would apply to all "split" foreign taxes claimed by taxpayers after December 31, 2010.

Denial of foreign tax credit with respect to foreign income not subject to United States taxation by reason of covered asset acquisitions. There are certain rules that permit taxpayers to treat a stock acquisition as an asset acquisition under U.S. tax law. Taxpayers can obtain similar results by acquiring interests in entities that are treated as corporations for foreign tax purposes, but as non-corporate entities (such as partnerships) for U.S. tax purposes. These transactions ("covered asset acquisitions") result in a step-up in the basis of the assets of the acquired entity to the fair market value that was paid for the stock (or interest in the business entity). In the foreign context, this step-up usually exists only for U.S. tax purposes, and not for foreign tax purposes. As a result, depreciation for U.S. tax purposes exceeds depreciation for foreign tax purposes, such that the U.S. taxable base is lower than the foreign taxable base. Because foreign taxes – and therefore foreign tax credits – are based on the foreign taxable base, there are more foreign tax credits than are necessary to avoid double tax on the U.S. tax base. Taxpayers are using these additional foreign tax credits to reduce taxes imposed on other, completely unrelated foreign income. The bill would prevent taxpayers from claiming the foreign tax credit with respect to foreign income that is never subject to U.S. taxation because of a covered asset acquisition. The provision would generally apply to related party transactions occurring after December 31, 2010.

Separate application of foreign tax credit limitation to items resourced under tax treaties. To prevent double taxation (i.e., full taxation by both a foreign country and by the United States on the same item of income), taxpayers are permitted to claim foreign tax credits with respect to foreign taxes paid on income earned offshore. To appropriately limit the use of the foreign tax credit system to the avoidance of double taxation, foreign tax credits are limited to the maximum amount of U.S. tax that could be imposed on the taxpayer's foreign source income (i.e., thirty-five percent (35%) of the taxpayer's foreign source income). Taxpayers have devised a technique to use the U.S. treaty network to enhance foreign tax credit utilization – well beyond what is needed to avoid double taxation – by artificially inflating foreign source income. With this technique, ownership of income-producing assets that would ordinarily be held by U.S.-based multinational companies in the United States (e.g., investments in U.S. securities) is shifted to

foreign branches and disregarded entities. This income is often lightly taxed on a net basis by the foreign country, but the treaty prevails in categorizing the entire gross amount of the income generated by the U.S. assets as foreign source. This artificially inflates the taxpayer's foreign source income and allows the taxpayer to use foreign tax credits to reduce taxes on foreign source income beyond the maximum amount of U.S. tax that could be imposed on such income. This unintended tax planning technique has nothing to do with relieving double taxation. The bill respects the treaty commitment to treating such income as foreign source, but segregates the income so that it is not the basis for claiming foreign tax credits that have nothing to do with double taxation. In doing so, the amendment conforms the foreign tax credit treatment of taxpayers operating abroad through foreign branches and disregarded entities to the treatment already afforded to taxpayers operating through foreign corporations. The bill would apply to taxable years beginning after the date of enactment.

Limitation on the use of section 956 for foreign tax credit planning (i.e., the "hopscotch" rule). U.S.-based multinational companies typically have complex foreign structures designed to mitigate their worldwide tax expense. In many cases, these structures include companies located in low-tax jurisdictions (e.g., tax havens such as Bermuda and the Cayman Islands) in a multi-tier chain of subsidiaries. If a foreign subsidiary with a relative high tax expense distributes a dividend up through a chain of companies, the foreign tax credit on the dividend ultimately received by the U.S. shareholder is a blend of the tax rates of each foreign subsidiary in that chain. If there is a tax-haven company in that chain, the U.S. tax due on the dividend may be significantly higher than the tax would have been if the foreign subsidiary's dividend could have simply "hopscotched" over the chain as a direct distribution to the U.S. shareholder. Affirmative use of section 956, which was originally enacted as an anti-abuse provision, readily accomplishes this "hopscotch" by deeming a dividend from a foreign subsidiary directly to the U.S. shareholder. By taking advantage of this "hopscotch" rule, the foreign tax credit on this "deemed dividend" can be greater than the foreign tax credit would be on an actual dividend. The bill would limit the amount of foreign tax credits that may be claimed with respect to a deemed dividend under section 956 to the amount that would have been allowed with respect to an actual dividend. The provision would apply to the affirmative use of section 956 after December 31. 2010.

Special rule with respect to certain redemptions by foreign subsidiaries. Where a foreign-based multinational company owns a U.S. company, and that U.S. company owns a foreign subsidiary, the earnings of the foreign subsidiary are generally subject to U.S. tax when they are distributed to the U.S. shareholder. When those earnings are then distributed by the U.S. company to its foreign

shareholder, a thirty percent (30%) withholding tax applies, unless reduced by treaty or some other provision of the tax code. Foreign-based multinational companies have devised a technique for avoiding U.S. taxation of such foreign subsidiary earnings. This technique involves a provision of the tax code that was originally enacted as an anti-abuse rule that treats certain sales of stock between related parties as a dividend. For example, under this provision, where a foreign-based multinational corporation sells stock in the U.S. company to its foreign subsidiary, the cash received from the foreign subsidiary in this sale is treated as a dividend from that foreign subsidiary. This deemed dividend allows the foreign subsidiary's earnings to completely – and permanently – bypass the U.S. tax system. The bill would eliminate this type of tax planning by preventing the foreign subsidiary's earnings from being reduced and, as a result, the earnings would remain subject to U.S. tax (including withholding tax) when repatriated to the foreign parent corporation as a dividend. The provision would apply to acquisitions after December 31. 2010.

Modification of affiliation rules for purposes of rules allocating interest expense. To prevent double taxation (i.e., full taxation by both a foreign country and by the United States on the same item of income), taxpayers are permitted to claim foreign tax credits with respect to foreign taxes paid on income earned offshore. To appropriately limit the use of the foreign tax credit system to the avoidance of double taxation, foreign tax credits are limited to the maximum amount of U.S. tax that could be imposed on the taxpayer's foreign source income (i.e., thirty-five percent (35%) of the taxpayer's foreign source income). Taxpayers have used various techniques to minimize the amount of foreign source interest expense, which has the effect of artificially boosting foreign source income. In turn, this permits taxpayers to utilize more foreign tax credits than would otherwise be possible, and the use of such additional foreign tax credits has nothing to do with relieving double taxation. To prevent taxpayers from avoiding these rules, Treasury regulations prevent taxpayers from excluding foreign interest expense from the foreign tax credit limitation by placing it in foreign subsidiaries. The regulations achieve this result by including certain subsidiaries in the U.S. affiliated group. As a result, foreign source interest expense will be taken into account in the determination of the foreign tax credit limitation. The bill would modify the affiliation rules to strengthen these anti-abuse rules. The provision would apply to taxable years beginning after the date of enactment.

Repeal of 80/20 rules. Under current law, dividends and interest paid by a domestic corporation are generally considered U.S.-source income to the recipient and are generally subject to gross basis withholding if paid to a foreign person. If at least eighty percent (80%) of a corporation's gross income during a three-year period is foreign source income and is attributable to the active conduct of a

foreign trade or business (a so-called “80/20 company”), dividends and interest paid by the corporation will generally not be subject to the gross basis withholding rules. Furthermore, interest received from an 80/20 company can increase the foreign source income of, and therefore the amount of foreign tax credits that may be claimed by, a U.S. multinational company. Treasury has become aware that some companies have abused the 80/20 company rules. As a result, the President’s FY 2011 Budget proposes to repeal these rules. The bill would adopt the President’s Budget proposal to repeal the 80/20 company rules. The amendment would also repeal the 80/20 rules for interest paid by resident alien individuals. The bill would include relief for existing 80/20 companies that meet specific requirements and are not abusing the 80/20 company rules. Subject to the relief for these existing 80/20 companies, the provision would apply to taxable years beginning after December 31, 2010.

Technical correction to statute of limitations provision in the HIRE Act. The bill makes a technical correction to the foreign compliance provisions of the Hiring Incentives to Restore Employment (HIRE) Act to clarify the circumstances under which the statute of limitations will be tolled for corporations that fail to provide certain information on cross-border transactions or foreign assets. Under the technical correction, the statute of limitations period will not be tolled if the failure to provide such information is shown to be due to reasonable cause and not willful neglect.

OTHER REVENUE OFFSETS

Elimination of Advanced EITC. Presently, low- and moderate-income individuals may qualify for a refundable earned income tax credit (EITC). Individuals have the option of requesting advanced payments of the EITC throughout the year by having their payments of withheld income reduced by their employer. The President’s FY 2011 Budget proposes to eliminate the advanced EITC payment option, and the bill would incorporate that proposal. This provision is estimated to raise $1.021 billion over 10 years.

Quote of the Day

" I have discovered in life that there are ways of getting almost anywhere you want to go, if you really want to go.”

— Langston Hughes